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No. 418
Oct. Term, 1905.

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DEC 18 19
JAMES H. McKE

IN THE

SUPREME COURT OF THE UNITED STATES.

SHROPSHIRE, WOODLIFF & CO., APPELLANT.

vs.

THOMAS G. BUSH, THOMAS A. GILLESPIE, and ORION L. HURLBUT, as Trustees of the Southern Car & Foundry Co., Bankrupt, APPELLEES.

On Certificate from the United States Court of Appeals, for the Sixth Circuit.

BRIEF AND ARGUMENT IN REPLY TO BRIEF FILED FOR APPELLEES.

CHARLES F. BENJAMIN,
RUTHERFORD LAPSLEY,
FOR APPELLANT.

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For the trustees, who are appellees in this court, two lines of reasoning are advanced, which are mutually destructive. It is insisted that the wage claim must be, on the date of the filing of the bankruptcy petition, actually collectible by the workman himself who has earned the wages, or the priority is lost; on the other hand, they insist that this rule denying priority to the assignee of the wage claim must be applied as a beneficent provision to take care of the necessities and helplessness of the laboring man; thus taking away from the labor claim its most valuable incident, namely, its assignability, and its

priority of payment in the hands of persons who have advanced the amount of the wages to the laborer at a time when he was in need. The fallacy of this latter argument is shown in several cases which we have cited in the original brief, particularly the case referred to on page twenty-two of our brief, in which the leading case relied upon by the trustees is fully discussed.

In the brief filed for appellant in this cause, we based our argument on the proposition that the right of priority in a wage claim is a right which attaches to the debt and not to the person of the original creditor. This proposition is clearly established by a long line of decisions handling this question directly, which we have referred to in our brief; and unless the intention of Congress to depart from the settled construction placed upon the question by the Federal Courts is directly shown, in the case at bar, the rights which we assert should be sustained.

The argument for the trustees does not attempt to show to the Court any reason why the nature of the wage claim, and the priority which should be accorded it, is changed by the assignment of the claim from the original holder; in fact it is tacitly admitted that the nature of the wage claim is not changed by its assignment. The argument for appellees makes no attempt to show that the cases which we cite, holding that the nature of the debt is not changed by its assignment, are not relevant and applicable; they seek, however, to meet this issue by confession and avoidance, insisting upon a strictly technical construction of the Act, without reference to the equity and practical application of it in bankruptcy cases.

To accomplish this result they join two phrases of the clause of the Act under consideration, which have no natural connection, and are evidently not intended to be read together. In seeking to read into the act a construction which is not borne out by any

of the previous Federal Court decisions on this question, they make clause four (4) of Section 64-b, read, "wages due to workmen at the date of commencement of proceedings;" and insist that therefore the wage claim, which is admitted to have priority, in the hands of an assignee, must be denied that priority, if the wage claim is in the hands of an assignee on the date when the proceedings are commenced.

In Section 64 of the Act, it was the intention of Congress to provide for the payment in full out of the bankrupt estate *certain classes of debts;* and, of course, *these classes of debts being placed in correlative paragraphs or clauses, are to be considered of a kind.* That part of the Bankruptcy Act under consideration reads as follows:

"Section 64, (b) Debts to have priority, except as herein provided, and to be paid in full out of the bankrupt estate, and the order of payment shall be

(1) The actual and necessary cost of preserving the estate subsequent to filing the petition;

(2) Filing fees paid by creditors in involuntary cases, etc;

(3) Cost of administration, including fees and mileage payable to witnesses, etc.;

(4) Wages due to workmen, clerks or servants which have been earned within three months before the date of the commencement of proceedings; not to exceed three hundred dollars to each claimant."

It is evident from a casual consideration of this section 64 that it was the intention of Congress to designate certain claims or debts which should be protected in any event, out of the assets of the bankrupt estate. The contention of the trustees that the absolute liability of the bankrupt estate under section 64 b 4, should be for such wage claims as were collectible by the wage earner himself, if such contention is sustained, would make this clause of the act of small importance in the practical operation of the

law in bankruptcy cases.

There are two principal assertions made by the appellees upon which they seek to justify their refusal to allow the appellant's claim.

They contend that the bankruptcy act in express terms limits the priority in the wage claim to the person of the wage earner himself.

They further say that Congress intended this construction of the law for the benefit of the laboring man on account of his necessities and helplessness, when insolvency of his employer occurs.

It was not the intention of Congress to overturn the well settled rule of construction in cases involving the wage claim, so as to deny to it the right of priority of payment out of the bankrupt estate.

So far as we know the question has never been carried to the Supreme Court of the United States; or to the Court of appeals except in the case at bar. We have shown in our brief on pages 18 to 23, that only twice in the district courts has the issue been directly presented and decided under the bankruptcy act of 1898. These two cases are, the case decided by the court in Minnesota upon which the appellees rely, and the case reported in 128 Fed. 170, In re C. P. Harmon. These two decisions are directly in conflict, the latter case disapproved of Judge Lochren's decision, and gives what we consider to be a fair discussion of the merits of the assignee's rights to priority which we here assert.

It is not necessary in order to give to the assignee of any specified claim the right to priority, that the statute should in so many words state that an assignee is subrogated to the rights of his principal. The general law of contracts would give the as-

signee for value the rights held by the original claimant, and unless the statute in express terms denies this right to the assignee, it will be accorded as of course.

It is not perverting the terms of the bankrupt act to say that the assignee of the wage claim is entitled to the priority which the bankrupt act accords to the workman. It would be as reasonable to insist that Congress intended that the money must actually be paid to the workman, and not to an attorney who might charge him an unreasonable fee.

We have pointed out in our brief on page 20, that the essence of the Minnesota decision is contained in the sentence, "There is nothing in the nature of security or lien for the payment of wages which could pass to an assignee." Congress could not have intended a construction of this provision of the law relating to the wage claim, which would adopt this sentence as in accordance with the spirit of the national bankrupt law.

Federal Courts in passing upon the nature of a wage claim have always held that the security and priority passed to an assignee of the wage claim, irrespective of the time when the same was assigned. We do not think that there is any cause for the criticism which counsel for trustees make, of that part of our brief in which we show the many Federal Court decisions passing upon the rights of an assignee of a wage claim; for the reason that under the Bankruptcy Act of 1898 there are only two cases which have passed directly upon this question, and the later case disapproves of the former upon which the trustees rely.

We fail to find any statement in our brief that warrants the assertion of counsel for trustees, that we have reluctantly admitted that the majority of the decisions under the bankrupt act are unfavorable to our view of the case. We asserted in our brief, and

now assert, that there are only two cases directly deciding this question under the act of 1898, and one under the act of 1867.

In re Westlund, 99 Fed. 399, and in re C. P. Harmon 128 Fed. 170, are the two cases decided under the present bankrupt act; and we are inclined to think and believe that the Court will consider, that the reasoning of the decision in the latter case is more conformable to the evident spirit of the Bankrupt Act than that of the former. The case decided under the Act of 1867, In re Brown, Fed. cases 1974, is distinctly in our favor; as we have pointed out on page 19 of our brief.

The inconsistency of counsel for Trustees is further shown in their urging as a precedent in their favor the case referred to in the referee's brief, found in the New Jersey Equity Reports.

They say that our suggestion that certain Alabama cases might be considered by the Court as relevant to this issue, is not to be considered by the court, because it has to do with the State Insolvency Law, and not with the National Bankrupt Act. Still the New Jersey decision is considered by them as a very fine authority on the question at issue, when it is admitted that it is based entirely on the New Jersey Insolvency Law. We are inclined to think that the basis of the referee's decision contrary to the admission of rights which we assert, may be found in certain expressions used in the decision construing the State Insolvency Law of New Jersey.

The admission of the right of priority in a wage claim in the hands of the assignee, as herein asserted, is in the interest of and for the benefit of the wage earner.

It is strongly urged in the brief which has been

filed for the Appellees that Shropshire, Woodliff & Company should not be paid in full the amount of their claim, for the reason that they fall in the category of what counsel see fit to denominate "speculators." They insist that the law should not be enforced in such a way as to countenance the nefarious practice of that class of financiers who prey upon the necessities of the poor laboring man.

If there is anything in this record to bear out or support such a contention, either in the facts or in the law of the case, we fail to find it. The quotation which we make from a recent decision of the Supreme Court of Illinois, is directly relevant.

"We cannot see that there is anything intrinsically vicious in an assignment of wages. The assignor in such case simply draws upon his future prospects to supply present needs; which may be of the most urgent and pressing character. There is no law in this state to prevent a poor person from mortgaging or pledging any or every article of property he possesses as security for his debts, and such a privilege may be of great value."

Mallin vs Wenham, 208 Ill. 442.

We do not know why such a line of argument should be countenanced, which has for its evident purpose the casting of an insinuation on the merits of the claim, making use of an argument which is entirely irrelevant.

In order to sustain the position which they had taken, counsel for trustees started out with the argument that a literal and strict construction of the Act must be had, irrespective of the purpose and equity of the Act. They then shifted their position, and insisted that the claimants were speculators, and that no court of equity would protect them in their wicked practices; that the law must be enforced for the benefit of the poor and helpless laboring man;

and therefore the claim of appellant must be denied.

It has been well said that the allowance of priority to the assignee of a wage claim is no detriment to the general creditors of the estate; as, but for the assignment, the full amount of wages would have been paid to the laborer, and in either event it is of no concern to the creditors, who do not claim priority. The trustees are seeking to protect the interests of the general creditors, and we respectfully submit that there is nothing in their contention that the Bankruptcy Act fixes an arbitrary time limit, marking a division line between priority to the assignee of a wage claim at a certain time, and the disallowance of the right which they claim, if the assignment occurred at another time.

Respectfully submitted,

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